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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D13

Date: **AUG 19 2011** Office: CALIFORNIA SERVICE CENTER FILE: WAC 10 104 50188

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition on May 28, 2010. The director granted a subsequent motion to reopen and denied the petition on September 7, 2010. The director denied a motion to reopen and reconsider filed on October 26, 2010. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The beneficiary signed the Form I-129, Petition for a Nonimmigrant Worker, filed with the U.S. Citizenship and Immigration Services (USCIS) on March 3, 2010. The regulation at 8 C.F.R. § 214.2(r)(7) provides:

Jurisdiction and procedures for obtaining R-1 status. An employer in the United States seeking to employ a religious worker, by initial petition or by change of status, shall file a petition in accordance with the applicable form instructions.

Thus, the regulation does not authorize the alien to self-petition for classification as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act and the director properly denied the petition on May 28, 2010. On June 28, 2010, counsel for the prospective employer filed a motion to reopen, asserting that the petition was prepared by an attorney in India who improperly listed the alien as the petitioner and incorrectly asked him to sign the form. Counsel asserted ineffective assistance of counsel and that the "true petitioner" is the Sikh Temple, Guru Nanak Gurudawara. The petitioner submitted another Form I-129 signed by Harmesh Singh, the president of the prospective employer, without a filing fee.

The director erroneously granted the petitioner's motion to reopen and substituted the prospective employer as the petitioner. However, no regulation or statute permits the director to substitute petitioners for a previously filed petition. USCIS is statutorily prohibited from providing a petitioner with multiple adjudications for a single petition with a single fee. The initial filing fee for the Form I-129 covered the cost of the director's adjudication of the I-129 petition under section 101(a)(15)(R)(1) of the Act. Pursuant to section 286(m) of the Act, 8 U.S.C. § 1356, USCIS is required to recover the full cost of adjudication. In addition to the statutory requirement, Office of Management and Budget (OMB) Circular A-25 requires that USCIS recover all direct and indirect costs of providing a good, resource, or service.¹ Therefore, when the new Form I-129 was filed with a new petitioner, it should have been accompanied by the appropriate filing fee.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

¹ See <http://www.whitehouse.gov/omb/circulars/a025/a025.html>.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal – (A) Appeal filed by person or entity not entitled to file it – (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Only an affected party, a person or entity with legal standing, may file an appeal of an unfavorable decision. The Form I-290B, Notice of Appeal or Action, was signed by [REDACTED]. The record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, authorizing Mr. [REDACTED] to act on behalf of the petitioner/beneficiary, and Mr. [REDACTED] is not recognized as an authorized or accredited representative pursuant to 8 C.F.R. § 292.1(a). The appeal has not been filed by the petitioner or by any entity with legal standing in the proceeding. Therefore the appeal has not been properly filed and must be rejected.

As the appeal was not filed by an affected party, the appeal must be rejected.

ORDER: The appeal is rejected.